



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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March 5, 2015



Stacy Engel  
Waushara County Human Services  
213 West Park Street  
PO Box 1230  
Wautoma, WI 54982-1230

RE:

  
Case No. CCB - 162216

Dear Parties:

Enclosed is a copy of the Final Decision in the above-referenced matter.

Sincerely,

Denise Olson  
Legal Associate

- c: East Central IM Partnership - email
- Child Care Benefits - email
- Attorney Vanessa Kuettel - email



STATE OF WISCONSIN

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In the Matter of



DECISION

CCB 162216

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The attached proposed decision of the Administrative Law Judge dated January 30, 2015, is hereby adopted as the final order of the Department.

**REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST". Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

**APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Madison, WI 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing request (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 5<sup>th</sup> day of March,  
20 15

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Sara Buschman, Assistant Deputy Secretary  
Department of Children and Families



STATE OF WISCONSIN  
Division of Hearings and Appeals

In the Matter of



PROPOSED DECISION

CCB/162216

PRELIMINARY RECITALS

Pursuant to a petition filed November 25, 2014, under Wis. Admin. Code, §HA 3.03(4), to review a decision by Waushara County Human Services to discontinue child care assistance, a hearing was held on January 22, 2015, by telephone.

The issue for determination is whether petitioner and her husband are ineligible for child care because both work in a sheltered workshop.

**PARTIES IN INTEREST:**

Petitioner:



Petitioner's Representative:



Respondent:

Department of Children and Families  
201 East Washington Avenue  
Madison, Wisconsin 53703

By: Stacy Engel  
Waushara County Human Services  
P.O. Box 1230  
Wautoma, WI 54982-1230

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider  
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ) is a resident of Waushara County.
2. Petitioner and her husband have a one-year-old son. Both parents work at , a sheltered workshop, and they received child care assistance through the Wisconsin Shares program until the action at issue in this case.

3. In October, 2014, petitioner's county worker was informed during a state training session that employment at a sheltered workshop is considered an activity eligible for child care only if the child's parent is the sole caretaker. Because both parents are in the household petitioner's sheltered workshop is not a qualifying activity.
4. By a notice dated October 17, 2014, the county informed petitioner that child care assistance would end October 31, 2014 because the caretakers were not in an approved activity. A second notice dated October 20 ended the current authorization as of October 25, 2014.

### DISCUSSION

A parent is eligible for child care services if she needs the care to attend Wisconsin Works (W-2) approved school, to work, or to participate in W-2 activities. Wis. Stat., §49.155(1m)(a); Wisconsin Shares Child Care Assistance Manual, Part 1.5.0. If both parents are in the household both must be working or attending W-2 activities. Wis. Admin. Code, §DCF 101.26(1).

Wis. Stat., §49.155(1m)(2) provides that a parent can receive a child care subsidy for a child under age 13 in order for the parent to do any of a number of qualifying activities, including "2. Work in an unsubsidized job." "Unsubsidized employment" is defined in the Wis. Admin. Code, §DCF 101.03(35) to mean "employment for which the Wisconsin works agency provides no wage subsidy to the employer including self-employment and entrepreneurial activities."

The Child Care Manual mentions sheltered employment in the list of activities found at part 1.5.0. §1.5.3.4 provides: "Employment at a sheltered workshop licensed under s. 104.07(2), Wis. Stats, is considered unsubsidized employment and an allowable activity if the parent is the sole caretaker of a dependent child in need of child care to allow the parent to be employed."

Petitioner argues that the provision limiting sheltered workshop activities to just one parent has no basis in the law. Indeed, neither the statute nor the administrative code differentiates sheltered workshops from other types of unsubsidized employment. Therefore, in this case, both parents were working in unsubsidized employment, and both thus are in a qualifying activity as defined by the code.

To limit eligibility based upon a sheltered workshop to only one parent makes no sense legally or practically. If both parents, due to disability or other limitation, qualify for a sheltered workshop, I fail to see how the situation is any different than if a single parent qualifies for a sheltered workshop. My suspicion is that §1.5.3.4 was written into the policy simply to make clear to economic support workers that sheltered workshops can be considered qualifying unsubsidized employment activities.

I conclude that the policy provision allowing a sheltered workshop to be a qualifying activity only if the worker is a sole caretaker is in conflict with the state law that puts no such restriction on the activity. Therefore the discontinuance of child care assistance was incorrect, and the county should restore eligibility as it existed prior to the October 17, 2014 notice.

### CONCLUSIONS OF LAW

The discontinuance of child care in this case was incorrect because both parents were working in unsubsidized sheltered workshop employment, and the policy limiting eligibility to only sole caretakers in sheltered workshops is in conflict with the Wisconsin Administrative Code definition of unsubsidized employment.

**THEREFORE, it is**

**ORDERED**

That the matter be remanded to the county with instructions to restore petitioner's child care eligibility based upon her and her husband's work in a sheltered workshop, if they otherwise remain eligible for child care. The county shall do so within 10 days of the final decision in this case.

**NOTICE TO RECIPIENTS OF THIS DECISION:**

This is a Proposed Decision of the Division of Hearings and Appeals. IT IS NOT A FINAL DECISION AND SHOULD NOT BE IMPLEMENTED AS SUCH.

If you wish to comment or object to this Proposed Decision, you may do so in writing. It is requested that you briefly state the reasons and authorities for each objection together with any argument you would like to make. Send your comments and objections to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy to the other parties named in the original decision as "PARTIES IN INTEREST."

All comments and objections must be received no later than 15 days after the date of this decision. Following completion of the 15-day comment period, the entire hearing record together with the Proposed Decision and the parties' objections and argument will be referred to the Secretary of the Department of Children and Families for final decision-making.

The process relating to Proposed Decision is described in Wis. Stat. § 227.46(2).

Given under my hand at the City of Madison,  
Wisconsin, this 30 day of January, 2015



Brian C. Schneider  
Administrative Law Judge  
Division of Hearings and Appeals